

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 424 of 1982

Date of decision: 9-9-98

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RATILAL S GANDHI

Versus

CHHITIBEN WD/O RAMESH K MACHHI

Appearance:

MR MI PATEL for Appellants
None present for the respondent.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/09/98

ORAL JUDGEMENT

This is an appeal under section 30 of the Workmen's Compensation Act, 1923 by the employer - owner of the vehicle and United India Insurance Co. Ltd., against the award of the Commissioner for Workmen's Compensation, Vadodara, in W.C.Claim No.19 of 1979 decided on 13th November, 1981. Under the impugned award the Commissioner for Workmen's Compensation, Vadodara, awarded Rs.18,000/- towards compensation along with interest at 6% from 1-6-1976 till recovery of the said amount and further sum of Rs.9,000/- as penalty being 50% of the amount of compensation to the claimants. This award has been made against both the employer - owner of the vehicle and the insurance company and hence this appeal before this court.

2. It is not in dispute that the deceased Ramesh alias Khushalbhai died on 25th May, 1976 as a result of the injuries received by him in the vehicular accident that took place on 9-5-1976. The claimants respondents are widow and minor son of the deceased.

3. Learned counsel for the appellant raised twofold contentions in this appeal. Firstly it is contended that the deceased was not employee of appellant No.1. He has taken the vehicle, a tempo, from appellant No.1 for his own business and as there existed no relation of employer - employee, so even if he died in motor vehicular accident no liability could have been fastened of the payment of compensation under the Workmen's Compensation Act, 1923 on the insured and consequently there is no question of indemnifying the liability of the insured by the insurance company also. The second contention raised is that the award of the Commissioner to the extent it awarded Rs.9,000/- by way of penalty is wholly perverse.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the appellants.

5. From the impugned award I find that on appreciation of evidence produced by both the parties the Commissioner has reached to the conclusion that there was a relationship of employer and employee between the deceased and appellant No.1. It is the case where there is oath against oath from both the sides; and the Commissioner had to decide which of these evidence

produced by both the parties has to be accepted. In the given facts of the case the learned Commissioner under Workmen's Compensation Act has not committed any error in relying on the evidence produced by the claimants respondents. Otherwise also death of the deceased was as a result of motor vehicular accident on which there is no dispute. Appellant No.1 has failed to produce any agreement or memorandum of understanding or any other document of any arrangement between him and the deceased for carrying on the business of plying tempo. It is only oral statement made by appellant No.1 and in presence of evidence of the claimants - respondents the Commissioner has not committed any error or illegality in holding it to be a case of death of the deceased as a result of the motor vehicular accident arisen out of and in the course of his employment. The first contention raised by the learned counsel for the appellant is therefore devoid of any substance.

6. So far as the second contention is concerned, suffice it to say that the appellants have not deposited the amount of compensation within the stipulated period. Even after filing of the application, learned counsel for the appellants does not dispute, the amount of compensation payable in accordance with the provisions of the Workmen's Compensation Act, 1923 has not been deposited by them. In the presence of these facts the Tribunal has not committed any error in awarding Rs.9,000/- as penalty. No other point has been raised.

4. In the result the first appeal fails and the same is dismissed.

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